

EXHIBIT 12

EXHIBIT 6

MOGINRUBIN LLP

Daniel J. Mogin (SB # 95624)
Timothy Z. LaComb (SB# No. 314244)
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 687-6611
Facsimile: (619) 687-6610
dmogin@moginrubin.com
tlacomb@moginrubin.com

Counsel for Plaintiff

Additional counsel on Signature Page

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SIMON AND SIMON, PC d/b/a CITY
SMILES and VIP DENTAL SPAS,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

ALIGN TECHNOLOGY, INC.,

Defendant.

Case No.: 3:20-cv-03754-VC

**PLAINTIFF VIP DENTAL SPAS' THIRD
AMENDED RESPONSES TO ALIGN'S
FIRST SET OF INTERROGATORIES**

SPECIFIC OBJECTIONS AND RESPONSES

INTERROGATORY NO. 1

For each Intraoral Scanner that You have purchased, identify the name of the Intraoral Scanner, the date of purchase, the office location for which You purchased the Intraoral Scanner (i.e., the address of the office), the price that You paid for the Intraoral Scanner, whether You received a discount or promotional price for Your purchase, and, if You received a discount or promotional price for Your purchase(s), the name of the promotion or discount program, including any brand loyalty program name, promotion, and whether volume discounts were provided or exclusivity was required as part of the promotion or discount program.

RESPONSE:

Plaintiff objects to Align's definition of "Intraoral Scanners" (Definition No. 7) as overly broad, unduly burdensome, and vague and ambiguous, in light of how "Scanners" are defined in the Amended Class Action Complaint as "hand-held digital intraoral scanners used to generate scans to order Aligners" and referenced in the allegations and claims set forth therein.

Plaintiff further objects to this Interrogatory to the extent it seeks information that is already in the possession, custody, or control of the defendants, and thus is unnecessarily burdensome. Subject to that objection, Plaintiff states that the only Intraoral Scanner that Plaintiff has purchased is the iTero Element 2 ("the iTero"), Serial number BLX2018W19A117 which was purchased from Align on June 28, 2018, for \$29,565, and which included an HDU Upgrade and taxes. Plaintiff purchased this scanner pursuant to a trade in rebate program. In order to take advantage of the rebate program, on or around June 2, 2018, Plaintiff purchased a used iTero from a doctor named Miriam Van Allen in Westwood, CA, for \$2,250, and immediately turned that scanner in in exchange for a \$5,000 rebate on the iTero Element 2. The used scanner was never used in Plaintiffs' practice. The Element 2 scanner was purchased for use in VIP Dental Spas' office located at 8747 Santa Monica Blvd., West Hollywood, CA 90069. To plaintiff's knowledge no

brand loyalty program name, promotion, or volume discounts were provided, nor was exclusivity required as part of the promotion or discount program.

INTERROGATORY NO. 2

For each Intraoral Scanner that You purchased, please state the dates that You used the Intraoral Scanner, all addresses where You have used the Intraoral Scanner and the dates of use at each such address that You identify, all dental conditions and/or treatments for which or in connection with You used the Intraoral Scanner, and if you are no longer using the Intraoral Scanner, identify what became of that Intraoral Scanner, including whether You sold the Intraoral Scanner (and if so, to whom), traded in the Intraoral Scanner (and if so, to whom), otherwise disposed of the Intraoral Scanner (and if so, how you did so), and if you still have the Intraoral Scanner, whether you intend to use it again (and if so, when and for what purpose(s)).

RESPONSE:

Plaintiff repeats its objection to the definition of “Intraoral Scanners” as stated in Response No. 1 above, and objects to this Interrogatory to the extent it seeks information that is already in the possession, custody, or control of the defendants, and thus is unnecessarily burdensome. Subject to that objection, Plaintiff responds that the new iTero has been in use from the date of delivery through the present at VIP Dental Spas, 8487 Santa Monica Blvd., West Hollywood, CA 90069. Plaintiff states that it has used the iTero for the following purposes: Aligners, crown and bridge impressions, night guards, and retainers. The used scanner referenced in Response No. 1 above was never used in Plaintiff’s practice.

INTERROGATORY NO. 3

Identify all treatments for Malocclusion (including the brand names of any Aligner Product and any wire and bracket braces product) that You have offered, prescribed, or otherwise provided to patients and the date ranges within which You offered, prescribed, or otherwise provided those treatments to patients.

RESPONSE:

Plaintiff objects to Align's definition of "Aligner Product(s)" (Definition No. 5) as overly broad, unduly burdensome, and vague and ambiguous, in light of how "Aligners" are defined in the Amended Class Action Complaint as "custom-manufactured, transparent, removable dental aligners made from clear plastic" and referenced in the allegations and claims set forth therein.

Plaintiff states that it has offered, prescribed, or otherwise provided the following malocclusion treatments, during the following dates:

- Invisalign – 2015 through present
- Night guards – 2015 through present
- Candid Aligners – 2022 through present

INTERROGATORY NO. 4

Identify all Aligner Products that You have purchased, including the brand name of the Aligner Products, the date(s) of purchase, the price(s) that You paid for the Aligner Products, whether You received a discount or promotional price for Your purchase(s), and, if You received a discount or promotional price on Your purchase(s), the name of the corresponding promotion or discount program, including any brand loyalty program name, and whether volume discounts were provided or exclusivity was required as part of the promotion or discount program.

RESPONSE:

Plaintiff repeats its objection to the definition of "Aligner Products" in Response No. 3 above, and objects to this Interrogatory to the extent it seeks information that is already in the possession, custody, or control of the defendants, and thus is unnecessarily burdensome. Subject to those objections, Plaintiff has produced a breakdown of payments made to Align as extracted from its account on Align's website.

Dated: January 31, 2023

As to objections:

By: /s/ Timothy Z. LaComb
Timothy Z. LaComb

MOGINRUBIN LLP

Daniel J. Mogin (SB # 95624)
Timothy Z. LaComb (SB # 314244)
600 W. Broadway, Suite 3300
San Diego, CA 92101
Telephone: (619) 687-6611
Facsimile: (619) 687-6610
dmogin@moginrubin.com
tlacomb@moginrubin.com

John Radice (*pro hac vice*)
Daniel Rubenstein (*pro hac vice*)
April D. Lambert (*pro hac vice*)
RADICE LAW FIRM, P.C.
475 Wall Street
Princeton, New Jersey 08540
Telephone: (646) 245-8502
Facsimile: (609) 385-0745
jradice@radicelawfirm.com
drubenstein@radicelawfirm.com
alambert@radicelawfirm.com

Eric L. Cramer (*pro hac vice*)
Michael J. Kane (*pro hac vice*)
Hope E. Brinn (State Bar No. 338508)
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103
Telephone: (215) 875-4604
Facsimile: (215) 875-5707
ecramer@bm.net
mkane@bm.net
hbrinn@bm.net

Joshua P. Davis (State Bar No. 193254)
BERGER MONTAGUE PC
59A Montford Avenue
Mill Valley, CA 94941
Telephone: (415) 215-0962
Facsimile: (215) 875-5707
jdavis@bm.net
Daniel J. Walker (*pro hac vice*)
BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW, Suite 300
Washington, DC 20006
Telephone: (202) 559-9745
Facsimile: (215) 875-5707
dwalker@bm.net

Gary M. Klinger (*pro hac vice*)
MASON LIETZ & KLINGER, LLP
227 W. Monroe Street, Suite 2100
Chicago, IL 60630

Telephone: (202) 429-2290
Facsimile: (202) 429-2294
gklinger@masonllp.com

David K. Lietz (*pro hac vice*)
MASON LIETZ & KLINGER, LLP
5101 Wisconsin Ave., NW, Ste. 305
Washington, DC 20016
Telephone: (202) 640-1160
Facsimile: (202) 429-2294
dlietz@masonllp.com

Kevin Landau (*pro hac vice*)
Miles Greaves (*pro hac vice* forthcoming)
TAUS, CEBULASH & LANDAU, LLP
80 Maiden Lane, Suite 1204
New York, New York 10038
Telephone: (646) 873-7654
Facsimile: (212) 9340703
klandau@tcllaw.com
mgreaves@tcllaw.com

Additional Counsel for Plaintiffs in *Simon and Simon, PC d/b/a City Smiles and VIP Dental Spas v. Align Tech., Inc.*

VERIFICATION

I, Sherwin Matian, hereby certify under penalty of perjury that PLAINTIFF VIP DENTAL SPAS' THIRD AMENDED OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES are true and correct to the best of my knowledge, information, and belief.

Executed on 1-25, 2023



Sherwin Matian